

# **UTAH SCHOOL** LAW UPDATE

Utah State Office of Education

May 2007

## The Long Arm of the Vice Principal

Cyber-bullying and other Internet or cell phone activities between students continue to raise new issues for school disciplinarians (often vice principals). If and when a school can discipline a student for activity that occurs outside of the school, however, is not a new issue.

Case law from across the nation continues to support the right of a school to take action against a student for conduct that has a negative impact on the school.

The key, obviously, is that there is a connection to the school.

A student arrested for burglary on Sat. evening, for example, may cause concern for the school, but may have little actual effect on the school.

If there is no connection to the school—the police informed the vice principal but no one else at the school knows what happened—the school would not have the authority to impose discipline on the student for his actions.

However, the school could impose some conditions on the student's attendance at the school if it determines based on the

facts of the arrest that the student might pose a safety risk to himself or other students.

If the student used a knife in the burglary, for example, the school might decide to place the student in an alternative school setting until his case has been adjudicated and any court or-

> dered probation or prison terms fulfilled.

If the student did not use a weapon, but ran out of the store with a beer and a bag of Doritos under his shirt, the

school would be hardpressed to justify changing his placement.

Teenagers, and adults, do stupid and sometimes illegal things. While the school probably does not condone the student's behavior, or view it as a minor prank, there is little reason to fear the student will harm other students or school property given these facts.

If, on the other hand, a student is at a party with other students and is seen drinking alcohol or using illegal narcotics, the school can justify disciplinary action against the student.

Where other students are present, there is enough of a connection

#### to the school for the school to discipline the student.

Similarly, if a student is involved in a party over the weekend and tells all her friends about it at school on Monday, it becomes a school discipline issue. Once the student brings her conduct into the school by sharing it with her friends, the school can act.

What action the school may reasonably take also depends on the circumstances. If the student is bragging about illegal drinking or drug use to other students, the school • The Utah State Board might impose a shortterm suspension and require proof of ongoing drug or alcohol-related counseling as a condition of attendance at the school.

If the student's activity is a mean-spirited text messaging attack against another student, again the school has enough of a connection between the activity and the school to justify discipline such as a short term suspension. The school could also prohibit the student from carrying a cell-phone at school.

Thus, when the school feels the effects, it can reach beyond school grounds to discipline stu-

## Inside this issue: Professional Prac-2 Eye On Legislation Recent Education Cases 3 Your Questions



#### **UPPAC CASES**

of Education revoked Oland Marvin Thompson's educator license by default. Mr. Thompson accessed and downloaded pornographic materials on multiple occasions using district computer equipment. Mr. Thompson did not respond to multiple correspondence requests.

### Eye On Legislation

Sex education has received a fair amount of national attention recently, in part due to research reports indicating a significant increase in sexually-transmitted diseases in 15-24 year olds.

At least three states have responded with legislation. Iowa passed legislation requiring that all sex education classes use research-based information. Research-based means the information is, as the name suggests, supported by medical and scientific research, peer-reviewed, and unbiased. The law also prohibits racial, ethnic, sexual orientation, or gender based biases in the materials used. The bill allows a school to use abstinence-only education materials. Des Moines Register, NASBE Headline Review.

Washington has gone further, passing legislation that requires researched based information, but also banning schools from teaching abstinence-only education. Colorado has adopted the research-based requirement, without banning abstinence-only curriculum. Associated Press, NASBE Headline Review.

NEWS On other fronts, Mississippi now legislates the amount of health education provided in public schools. A bill signed by the Mississippi governor requires 150 minutes per week of physical activity and 45 minutes of health education. In response to the legislation, the Mississippi State Board of Education plans to take on school lunches and will vote on a ban on known health risks sodium, sugar and trans fats-in school lunches. Clarion Ledger, NASBE Headline Review.

Closer to home, the voucher referendum has been declared sufficient and the question of whether Utah should implement the voucher bill will head to the voters.

Meanwhile, the State Board will wrestle with the thorny legal question of if and how to implement the

Education Vouchers Amendments bill.

The question is not as simple as news reports make it seem. The amendment bill leaves the Board with \$100,000 to administer a state-wide program and many gaping holes to fill—if it can legally do so.

The Board finished its work on a rule based on the original voucher bill, but that rule cannot go into effect since the law is on hold per the referendum. The Board has begun deliberations on the possibilities of a new rule that might address the amendments without reference to the original bill.

#### **UPPAC** Case of the Month

Educators crossing appropriate educator-student boundaries represent the majority of UPPAC cases. The problem is particularly acute with educators who also serve as coaches or lead other extra-curricular activities.

Two common boundary-defying scenarios are educators delving into the personal lives of students and "touchy" educators.

Both problems are fully exposed in a university case, <u>Jennings v. University of North Carolina</u> (4th Cir. 2007).

UNC has an outstanding women's soccer program. Under head coach Durrance, the team has won "the most national championships in the history of the sport." But this highly successful coach has a terrible habit of talking about sex with his players.

Jennings was recruited to the team by Durrance. The then-17 year old freshman soon discovered that her highly respected coach spent an inordinate amount of time asking his players who they were having sex with, if they had sex over the weekends, how many men they had sex with and other highly personal and inappropriate questions. He also commented on the women's bodies. Other players affirmed that Durrance would initiate or encourage talk about sex "any time the team was together."

Durrance was also commonly seen touching one particular player. He would hug her, brush her hair back, giver her back rubs, whisper in her ear and touch her stomach.

Jennings complained to UNC legal counsel about Durrance's activities. She was told to "work it out with Durrance." After she was cut from the team, her parents sent letters of complaint to UNC as well. The athletic director investigated. Durrance admitted he talked about sex, but in a lighthearted manner. The athletic director closed the investigation with a letter of apology to

Jennings and a "mild letter of reprimand" to Dorrance.

Jennings and another teammate then sued the school.

The 4th Circuit received the case after a district court granted the school summary judgment. The 4th overturned that decision, ruling that Jennings can proceed to trial with her claims of Title IX sexual harassment.

As the Court stated "Dorrance abused his power as coach . . .; he pried into and talked openly about his players' sex lives in a way that was disrespectful and degrading. The disparity in power between Dorrance and his players trapped players into responding to his questions and enduring the environment."

The same is even more true in a high school setting. Coaches who abuse their power over high school students cause untold harm and may face personal as well as professional sanctions.

Page 2

Utah State Office of Education

#### **Recent Education Cases**

Christian Heritage Academy v. Oklahoma Secondary School Activities

Association (10th Cir. 2007). In an attempt to address perceived disparities between private school sports programs and public, the OHSSAA required that a private school receive approval from a majority of OHSSAA members before it could join the Association.

Christian Heritage is a small private school with a very good 8-man football team. The school was denied membership based on information sent out by a public school superintendent implying that the school had an unfair advantage.

The OSSAA formed a committee to address issues raised by the superintendent, including enrollment practices, admission standards, scholarships, and recruiting. The committee discovered that private schools in general did not have an unfair advantage.

Public school members of the association, however, continued to foster the misperceptions. Christian Heritage applied for membership a second time and was again denied.

Christian Heritage then sued the OHSAA asserting a violation of Equal Protection under the 14th Amendment.

The Court ruled that OHSAA is a state actor subject to the 14th Amendment. The Court also found

that OHSAA's majority vote rule violated the Equal Protection Clause because it required private schools to jump through an additional hoop that public schools escape.

The Court could find no rational reason for the extra hoop since OS-SAA rules would accomplish the goals of the association—i.e., eliminating competitive advantage, preventing exploitation of student athletes—without the majority vote rule.

One of the better quotes from the opinion comes from the dissent by Justice McConnell (also a University of Utah law professor) who began his opinion: "The plaintiff's name may suggest this case is about religion, and in a sense that is true. It is about Oklahoma high school football."

Williams v. Dallas Independent School District (5th Cir. 2007). Continuing the football theme, a Dallas school district's decision to non-renew a high school athletic director and football coach for work-related speech was upheld by the 5th Circuit.

The AD/coach, Williams, repeatedly asked the school's office manager for information about the money appropriated to athletics. When the information was not provided, Williams wrote several

memos to the manager and the principal, questioning the lack of information.

In one memo, Williams informed the principal that he had talked with coaches at other schools to determine standard procedures and found that at his high school "there is a network of friends and house rules which govern practices here at L.G. Pinkston High School."

Four days later, the principal removed Williams as A.D. The district later informed him that his contract would not be renewed. Later still, the district announced it would be investigating the principal for several matters including "financial accountability."

Williams sued, claiming he was retaliated against in violation of the First Amendment. While the court found the speech to have social importance, it ruled that it was not protected speech under the First Amendment because it was made in the course of his employment duties.

The court relied on the U.S. Supreme Court's decision in <u>Garcetti</u> v. <u>Ceballos</u> in its holding that Williams could be non-renewed based on the memos and despite the importance of the memos.

## **Your Questions**

Q: May an 18-year old student require that the school not provide his records to his parents?

A: No. The federal Family Educational Rights and Privacy Act governs student records. It provides certain rights to parents to review records and to consent to the release of the records to others. When a student turns 18, those rights transfer to the student.

However, if a student is still declared as a dependent on the parent's income tax forms, the parWhat do you do when. . . ?

ents retain their rights as well.

Thus, a college student who has moved out, has a job and is fully independent of his parents can refuse to consent to his parents having access to the records. A student who is still dependent on mom and dad, on the other hand, has no right to deny mom and dad the proof of his performance at

school.

Q: A teacher discussed abortion as part of a statistics lesson. Is this okay?

A: Probably not. Discussion of topics related to sex requires prior written parental consent. Moreover, sex, like religion, politics, or other emotionally charged topics, must be directly related to the curriculum—i.e., a statistics lesson can be taught using a variety of

(Continued on page 4)

Utah State Office of Education

#### Utah State Office of Education

250 East 500 South P.O. Box 144200 Salt Lake City, Utah 84114-4200

Phone: 801-538-7830 Fax: 801-538-7768 Email: jean.hill@schools.utah.gov





The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of Education provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

## Your Questions Cont.

(Continued from page 3)

statistical sources without looking to a sexual issue. Nothing in the curriculum requires that a statistics lesson include sex in order to teach kids statistics (granted, the kids may pay closer attention, but the activity may violate state law).

If there is a valid pedagogical reason for discussing sexual topics in class, the teacher needs to give parents a two-week heads up and get their written permission to talk about the issue prior to the discussion.

Q: A parent has requested information about an incident involving her student and several others. All of the students engaged in a theft from the school, and all were disciplined. The parent wants to know what discipline

was imposed on each student and if any had prior disciplinary actions. What can we provide to her?

A: The parent is entitled to information about her student, and nothing more. She has no right to know about prior disciplinary actions against any student. The school can let her know that all students were disciplined according to their level of involvement in the activity. Beyond that, the parent has no further legitimate educational interest in the discipline of other students to justify providing her with the requested information.

Giving her the information, on the other hand, would violate the federal FERPA law.

Q: May a district deny my student access to graduation ceremo-

nies simply because she is dual enrolled?

A: Yes. The school can deny anyone access to graduation ceremonies. Students do not have a right to participate in the ceremony and can be excluded for a range of reasons, including that they are not full time students who have satisfied all of the school's requirements for graduation.

Schools routinely exclude full

time students who may be short a half credit or who do something in the last days that requires disciplinary action. As long as the rules are consistent and applied equally to all

students, a school can put limits on the privilege of participation in graduation.